IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1573 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRABHUDAS NATHALAL

Versus

RAMANLAL BHAIKBHAI FADIA

Appearance:

MR AJ PATEL for Petitioner

MR VC DESAI for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 29/02/2000

ORAL JUDGEMENT

#. The petitioner herein is the original plaintiff of H.R.P. Suit No.859/75. The aforesaid suit was filed by the plaintiff against the present respondent tenant for getting decree for possession of the suit premises. It is the case of the plaintiff that the defendant is a

tenant of the rear portion of the premises bearing Census No.214/D/5/1 in the city of Ahmedabad at the monthly rent of Rs.42/-. According to the plaintiff the defendant tenant is in arrears of rent from 11.3.1974 and inspite of repeated demand, he failed to pay up the arrears of rent. The plaintiff therefore gave demand notice under Sec.12 (2) of the Rent Act and the defendant having failed to comply with the same, ultimately the aforesaid suit was filed for getting possession of the suit premises as well as for getting arrears of rent.

#. The defendant appeared in the suit and filed his written statement at Ex.11. According to defendant the suit was not maintainable as the plaintiff had purchased the suit property after 1964 and he had not given any particular as to how he has purchased the suit property from the previous owner. According to the defendant one Keshavlal was the original owner of the suit property and he was recovering the rent through his manager Parshottamdas and that the plaintiff has paid the rent to said Parshottamdas. According to the defendant the demand of rent of the plaintiff at the rate of Rs.40/-p.m. plus electricity charges was not the correct demand as he was paying the rent at the rate of Rs.40/-p.m. inclusive of municipal taxes. According to the defendant the standard rent of the suit premises cannot be more than Rs.10/-p.m. It is the say of the defendant that inspite of repeated demand, the plaintiff has failed to give any satisfactory evidence to the defendant to prove his ownership over the suit property. That he had sent M.O. of Rs.480/- to the plaintiff but he had refused the same. Therefore on the aforesaid grounds, suit was resisted by the defendant in the Written Statement.

#. From the pleadings the trial court framed necessary issues at Ex.14. The trial court came to the conclusion that the standard rent of the suit premises is Rs.42/-p.m. It was found that the defendant was in arrears of rent from 11.3.1974 and that he was not ready and willing to pay the rent. Therefore on the aforesaid grounds the trial court decreed the suit of the plaintiff for possession and decree for arrears of rent was also passed to the tune of Rs.529/- by the learned judge of Small Causes Court No.7, Ahmedabad. Being aggrieved by the aforesaid decree for possession the defendant-tenant carried the matter further in appeal by way of preferring the appeal being Civil Appeal No.318/79. The aforesaid appeal was heard by the appellate bench of the Small Causes Court, Ahmedabad. The appellate court was of the opinion that since the plaintiff had not shown necessary

documents to the defendant about his ownership over the suit property, and under that circumstances if the tenant had not paid the rent to him, then in such circumstances, tenant can be said to be ready and willing to pay the rent. The appellate bench accordingly allowed the appeal of the defendant and decree for possession which was passed by the trial court was set aside and accordingly the suit of the plaintiff was dismissed by the appellate bench. The aforesaid judgment and decree of the appellate bench is impugned herein in the present revision application by the original plaintiff.

#. At the time of hearing of this revision application it was argued by Mr.S.R.Patel, for Mr.A.J.Patel that the appellate bench has committed a grave error of law in dismissing the suit of the plaintiff as not only the landlord informed the defendant but even the earlier landlord had also given a specific notice of attornment to the present defendant which is at Ex.24. He has submitted that the reasoning of the appellate court is contrary to law, therefore according to him the revision application is required to be allowed. As against the same it was argued by Mr.V.C.Desai, learned advocate for the respondent that looking to the facts and circumstances of the case it should be presumed that the tenant was ready and willing to pay the rent or in any case there was a sufficient ground for non payment of rent.

#. I have heard the arguments of both the learned advocates and I have gone through the record of the case. It is the case of the plaintiff from the beginning that he had purchased the suit property from its original owner Keshvalal Shyamdas and after purchasing the suit property he alongwith previous owner Keshvlal had jointly sent a notice at Ex.24, which is a notice of attornment dtd.11.3.74. By the said notice the defendant was clearly informed that the suit property is transferred in favour of the present plaintiff and the defendant was asked to pay the rent as specified in the suit notice. The tenant gave reply to the said notice at Ex.28 on 19.3.1974. In that notice he pointed out in para 2 that he has no knowledge that the present plaintiff has purchased the suit property and he had accordingly requested the plaintiff to show documentary evidence about his ownership with regard to the suit property. The plaintiff did not gave any further reply to Ex.28. Inspite of the earlier notice given at Ex.24, the tenant sent money order Ex.24 to the previous rent collector Parshottamdas which was obviously refused by him.

Thereafter tenant again sent a notice Ex.40 to the plaintiff demanding the documentary evidence from him about the ownership of the suit property. Ultimately the plaintiff gave demand notice as required by Sec.12 (2) of the Rent Act which is at Ex.26 dtd.8.10.74. In response to the said notice the defendant did not tender any amount of rent. However, he again reiterated his original stand by asking the plaintiff to show the documentary evidence about his ownership. He insisted for showing the title deeds and he also asserted that the rent was not Rs.42/- but Rs.40/-. It is not in dispute that whatever arrears of rent which was demanded by the plaintiff in the notice at Ex.26 were not paid within one month of receiving of the suit notice. Since the tenant had not complied with the suit notice the landlord had filed the present suit, but after filing of the said suit tenant had sent M.O. of Rs.480/- by Ex.36 dtd.31.3.1975. Therefore it is not in dispute that the present plaintiff alongwith his predecessor in title jointly gave notice at Ex.24 which is an attornment notice and in the same the earlier landlord had clearly pointed out to the defendant that the present plaintiff had become the owner of the suit property and therefore the rent was required to be paid to the present plaintiff by the defendant. Inspite of the aforesaid attornment notice, the defendant refused to accept the present plaintiff as owner of the suit property and went on demanding the documentary evidence from the plaintiff and asking him to prove to the satisfaction of the defendant that the plaintiff has become the owner of the suit property.

#. The purpose of informing the tenant by way of attornment is that the tenant is posted with the fact that henceforth he has to pay the rent to the new purchaser who has become his landlord. The tenant is not suppose to insist from the subsequent purchaser the documentary evidence about such purchase if the original landlord of the tenant informed the tenant that he had sold the property to Mr.A. It amounts to sufficient attornment and in the instant case there is a sufficient evidence to show that there was a proper attornment by the original owner informing the defendant that the present plaintiff had become the owner of the suit property. The insistence of the present defendant therefore for sale deed and other documentary evidence from the present plaintiff was absolutely uncalled for. In my view Ex.24 was sufficient attornment and tenant was bound to act as per the same. The present plaintiff was not suppose to lead evidence before the defendant by producing sale deed etc, especially when the original landlord himself has given notice to the defendant about

such attornment. Therefore inspite of aforesaid notice Ex.24 which was jointly given by the earlier landlord alongwith the present plaintiff the defendant failed to comply with the request of the plaintiff regarding the payment of rent. The trial court was therefore perfectly justified in coming to the conclusion that the defendant had neglected to pay the rent to the plaintiff.

#. It is interesting to note that even prior to aforesaid attornment notice Ex.24, the plaintiff had gone to the defendant to recover the amount of rent but the defendant was reluctant to recognise the plaintiff as a landlord and at that stage on his insistence the plaintiff had to give receipt in the name of earlier landlord which was given in the name of one Pursottamdas who was managing the suit property on behalf of the original landlord. Thereafter attornment notice Ex.24 was given still the defendant did not thought it proper to pay the rent to the subsequent purchaser. As stated earlier the purpose for informing the tenant is to see that the tenant may not have to pay the rent to the person who is not otherwise entitled to receive the same. But that does not mean that even though the original landlord informed the tenant that he had sold the property to a particular person still the tenant can compel the subsequent purchaser to show sale deed and other documentary evidence about his title. The tenant has no such right in law, it is not open for him to challenge the title of his landlord and if he does so he is doing at his own peril and risk. The insistence of the tenant therefore for production of sale deed from the plaintiff was not at all justified. No such insistence could have been made by the tenant and such insistence is also therefore not in consonance with the provision of law. In the instant case the tenant was given sufficient knowledge about the purchase of the suit property by the plaintiff. In that view of the matter, the tenant having failed to comply with the suit notice of demand, cannot escaped from the eviction decree under Sec.12 (3)(a) of the Rent Act.

#. Appellate bench however, came to the conclusion that the tenant was confused as originally the present plaintiff gave receipt after receiving the rent in the name of Pursottamdas who was the manager of the original plaintiff. However, the trial court has properly explained the said facts as to why the plaintiff was compelled to give receipt in his name. As the tenant was not ready to recongnise the present plaintiff as the owner of the suit property and at that stage the joint notice was given at Ex.24 which is a notice of

attornment. The finding of appellate court is contrary to law and it is difficult to sustain aforesaid finding as in my view the appellate court has committed an error of law in reversing the decree of trial court by justifying the conduct of the tenant that he was right in demanding the documentary evidence from the plaintiff for the purpose of proving the ownership in the suit property. As stated earlier the tenant has no right to insist or to compel the plaintiff to produce such documents to prove that the plaintiff was owner of the suit property. Such insistence on part of the defendant was absolutely uncalled for. The appellate bench therefore has misread the documentary evidence on record and accordingly has committed an error of law which is required to be corrected by this court while exercising revisional jurisdiction under Sec.29 (2) of the Rent Act. Once it is proved that the notice of attornment is given by the previous owner to the tenant, he is suppose to pay the rent to the new owner. Looking to the conduct of the present tenant, it can never be said that he was ready and willing to pay the rent as contemplated by Sec.12(1) of the Rent Act. The trial court was therefore absolutely justified in passing the decree for possession against the respondent tenant. The tenant has not paid the amount within one month, nor has raised any dispute of standard rent within one month of receipt of the notice. In that view of the matter, there is no option for the court but to pass a decree under Sec.12(3)(a) of the Rent Act. Taking the dispute of standard rent for the first time in the written statement cannot taken away the case out of the purview of Sec.12(3) (a)of the Rent Act as laid down by the Supreme Court in 31 (1) G.L.R. P.209, In that view of the matter the aforesaid case clearly falls within the purview of Sec.12(3)(a) of the Rent Act and therefore the trial court was perfectly justified in decreeing the suit for possession and the appellate bench has committed an error of law in coming to the conclusion that the tenant was ready and willing to pay the rent. For the reasons given hereinabove the judgment and the order of the appellate bench is required to be reversed and is accordingly reversed and decree for possession passed by the trial court is restored. Revision application is allowed. Rule is made absolute with no order as to costs.